

ORIGINAL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

BARRY DEAN BISCHOF,

Case No. CR-07-154-004-D

Defendant,

vs.

UNITED STATES OF AMERICA,

Plaintiff.

FILED

JUN - 8 2009

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY *[Signature]* DEPUTY

Defendant's Title 28 United States Code Section 2255
Motion To Vacate An Illegal Conviction And Its Sentence

Now Comes; defendant Barry Dean Bischof with this timely
Motion To Vacate An Illegal Conviction And Its Illegal
Sentence, via 28 U.S.C. §2255 as follows:

Constitutional Claims

1) Bischof is actually and factually innocent of any
violation of 18 U.S.C. §876(d) and is also requesting a
"Declaratory Judgment" to determine defendant's
constitutional rights to enforce a copyright and its laws.

2) Defendant Bischof has a valid copyright, that was
illegally used without defendant's authorization, nor had
defendant received any payment/compensation for its illegal
use by various individuals both known and unknown.

3) Defendant is also seeking a declaratory judgment to affirm plaintiff's constitutional right to enforce a copyright and its infringement by contract and the validity of said contract, as not being a "Threatening Communication" as an act of extortion under 18 USC §876(d) as alleged in Count Eight of the indictment or any esoteric violation under The Department of Homeland Security.

Defendant is also seeking a declaratory judgment that gives defendant Bischof the right and entitlement to enforce a copyright and its protection from any infringement, by sending the attached [Exhibit One] contract or a reasonable facsimile to any infringing party, without it being deemed extortion, as alleged in Count Eight of the indictment, nor a violation of any state or federal law.

Cite: Hale v Henkel 50 L.Ed. 652

power to contract unlimited

NOTICE: If this court finds that sending the attached contract [Exhibit One] can be deemed a threatening communication to illegally extort under 18 USC §876(d) as alleged in Count Eight, to collect a debt for an infringement of a copyright then all letters mailed for any type of debt collection or telephone collection calls {ie: Internal Revenue Service} would also fall under that umbrella, and be deemed a violation of Title 18 United States Code Section

876(d) "Extortion", would they not?

This issue has created constitutional uncertainty regarding defendant's owner/contract rights to enforce a copyright and its protection, without it being deemed extortion or a violation of 18 USC §372 or 18 USC §876(a) thru (d), or any other state or federal law.

"CLAIMS"

Defendant Bischof alleges that certain government individuals both known and unknown have illegally infringed on defendant's owned copyright without Bischof's consent, nor has compensation been made for its use.

Cite: Grismac Corp. vs. U.S., (1997) 214 Ct. Claims

556 F.2d 494

"JURISDICTION AND VENUE"

1) This is also an action for a declaratory judgment to determine the rights of a copyright and its illegal use.

Cite: Lorber v. L.A. Print (1986 CA9 Cal) 803 F2d 523

a) This 28 USC §2255 motion also is a request for a declaratory judgment that the provision of the regulations and entitlement of a copyright, may be enforced/protected by

the attached [Exhibit One] contract, without being a violation of 18 USC §876(d) "Extortion" as alleged in Count Eight of the indictment.

Cite: Toledano v. O'Connnor 501 F. Supp. 2d 127 (2007)

b) Petition contains a request for injunctive and other relief to prevent and enforce any copyright infringement.

"JURISDICTION"

Jurisdiction of this court is invoked pursuant to 28 USC §1331(a) Federal Question, §1337. This action is to question/affirm Bischof's constitutional right to protect and enforce a copyright and a declaration via 28 USC §2201.

"IN CONCLUSION"

Will this Honorable Court issue a "Declaratory Judgment" declaring that defendant [BISCHOF] is "Actually and Factually Innocent" of extortion under 18 USC §876(d) as defined in Count Eight, and the attached {Exhibit One} or a reasonable facsimile of this contract may be used to enforce/protect any copyright infringement, without violating any federal or state laws as presented?

Claim Two

1) Defendant was denied his constitutional right to effective counsel at trial, sentencing and on direct appeal, based on the foregoing and counsel's failure to perfect a direct appeal.

2) Ineffective counsel failed to protect all defendant's statutory rights to appeal his conviction and its illegal sentence vis 18 USC §3742(a)(1)(2).

3) Bischof's direct appeal was dismissed as untimely "CAUSE AND PREJUDICE" counsel and the court clerk failed to timely file Bischof's "Notice To Appeal".

4) At sentencing the judge refused to obey the commands limned in Federal Rule Criminal Procedure 32(c)(5), by failing to properly inform defendant Bischof of all his direct appeal rights and to directly ask defendant if he wishes to appeal, and if defendant wishes to appeal the court will direct the clerk to file a "Notice To Appeal" on his behalf.

The court's {Judge's} violation of Federal Rule Criminal Procedure 32(c)(5) caused defendant Bischof to unknowingly lose his statutory right to appeal.

Wherefore; this court must allow a "Nunc Pro Tunc" "Notice To Appeal" to be filed on defendant's behalf, will this court do so?

"JUDICIAL NOTICE"

Defendant has requested any and all trial transcripts from the court to no avail.

Wherefore; defendant Bischof reserves his right to amend this timely 28 USC §2255 via Federal Rule Civil Procedure 15(a)(c)(2) within sixty [60] days of his receipt of these trial transcripts, to enable Bischof to properly present any and all valid constitutional claims to this court, via 28 USC §2255.


Wherefore; will this court hereby order the clerk to send all trial transcripts without cost, to defendant forthwith?

Will this court also issue an order to hold Bischof's timely filed 28 USC §2255 in abeyance, until this court receives verification of Bischof's receipt of any and all trial transcripts and the filing of Bischof's amended 28 USC §2255 via Fed. R. Civ. Pro. 15(a)(c)(2) as a right?

Signed, dated and mailed

June 7th, 2009

Respectfully Submitted;


Barry Dean Bischof

#24501 -077

USP Victorville

Box 5300

Adelanto, California 92301

Certificate of Mailing

I Barry Dean Bischof placed a true and correct copy of the foregoing into the United States mail postage prepaid and affixed and addressed to:


Scott Williams

Assistant United States Attorney

210 West Park Avenue, Suite 400

Oklahoma City, Oklahoma 73102

this 7th day of June 2009


Barry Dean Bischof